

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

July 1, 1986

The regular meeting of the Washington State Liquor Control Board was called to order at 9:30 a.m., Tuesday, July 1, 1986, in the Board conference room, fifth floor, Capital Plaza Building, Olympia, by Chairman L. H. Pedersen. Board Members Kazuo Watanabe and Robert D. Hannah were present. Board Secretary Judy Pierce recorded the meeting.

PUBLIC HEARING - PROPOSED RULE CHANGE. Chairman Pedersen announced that this was the date and time scheduled for a continuation of the public hearing to consider and take action concerning the amendment of WAC 314-20-100 "Beer Wholesale Price Posting," "WAC 314-20-105 "Beer Supplier's Price Filings, Contracts and Memoranda," "WAC 314-24-190 "Wine Wholesale Price Posting," "WAC 314-24-200 "Wine Suppliers' Price Filings, Contracts and Memoranda," and WAC 314-52-114 "Advertising by Retail Licensees, Offering for Sale, or Selling Beer, Wine or Spirituous Liquor at Less Than Cost--Prohibited--Exceptions." He noted that the appropriate notices have been filed with the Code Reviser's office and mailed to various news media and interested persons.

John Hennen stated that on March 13, 1986, the Board held a public hearing concerning changes to the aforementioned WAC's which deal with selling below cost. At that time, Board staff proposed that "acquisition cost" be inserted in place of language which said "cost of doing business as referred to in 19.90 RCW." RCW 19.90 was repealed by the 1983 Legislature.

Mr. Hennen reiterated that the current rules with the outdated language are unworkable in that a determination of "cost of doing business" requires the use of debatable accounting concepts and creates numerous problems for both the clients who are regulated by it and the employees who are charged with enforcing the rule.

Jan Britt, Supervisor - M.I.W. Division, added that at the March 13 meeting, several members representing various tiers of the liquor industry were present. Most spoke against acquisition cost, unless a specific percentage was added to the language. Industry members felt that if their competitors could sell at acquisition cost, some of them would be put out of business due to increased competition.

J. Britt
111
DEP EXHIBIT
CA. 111
NOTARY PUBLIC
62705

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	076

Resp to Costco RFP
102

RESPTOCOSTCORFP0102

TX076_001

July 1, 1986

At the March 13 meeting, the Board charged industry members and Board staff with the responsibility to meet and come up with a recommended set percentage to be added to acquisition cost. Since that time, however, the Attorney General's Division has informed staff that a meeting between Board staff and industry members may constitute a violation of anti-trust laws and, therefore, the meeting was never held.

Ms. Britt said that while staff still believes the language as originally proposed regarding "acquisition cost" is the best solution to removing outdated language from our rules and make the rules understandable and enforceable, if the Board wishes to add a percentage of markup to the acquisition cost language, the M.I.W. Division recommends 15 percent.

Ms. Britt also indicated that the State of New York has language establishing a 12 percent markup above overhead costs on all liquor products. This language is currently being challenged in the U. S. Supreme Court and is expected to be heard some time in July to determine if such language violates federal anti-trust laws.

Chairman Pedersen asked if anyone present wished to speak either in favor of or in opposition to the proposed amendment.

Geoff Gibbs, attorney representing the Washington State Food Dealers Association, spoke against the proposed amendment, and suggested that more reasonable language would be acquisition cost plus a stated percentage, comprised of a reasonable, minimum markup.

Hank Sitko, President of the Washington State Food Dealers Association, was also opposed to the proposed amendment. He said percentages of markup vary because of the different types of stores--from convenience to supermarkets. He indicated that a survey was conducted, picking a representative sampling of their membership, and the percentages of markup ranged from 11 to 30, for an average of 20. He also was supportive of cost of doing business defined as acquisition cost plus a reasonable markup.

Ken Stormans, Olympia retailer, agreed with Messrs. Gibbs and Sitko, and suggested that acquisition cost include a specific percentage markup.

Resp to Costco RFP

103

RESPTOCOSTCORFP0103

TX076_002

July 1, 1986

John Hennen addressed the question of whether or not Board employees were citing businesses that were selling below cost. He said that the WAC, as currently written, is unenforceable and no violations have been issued to either wholesalers or retailers since the first public hearing on this proposed rule amendment.

Hal Wolf, retailer in Yelm, said he would support acquisition cost plus ten percent. He stated he was opposed to the concept of the Board "promoting the sale of alcoholic beverages" by allowing sales at cost.

Gwen Johnson, representing Thirsty's Beverages in Seattle, said she agreed with the previous testimony regarding the suggestion to define cost of doing business as acquisition cost plus markup.

Bob Seeber, representing the Washington State Restaurant Association, and particularly the class H licensees, said their sole concern is regarding WAC 314-52-114 as it relates to licensees selling spirituous liquor. He stated that the proposed amendment doesn't do anything for his clients; a ten percent markup on top of cost of acquisition wouldn't come anywhere near the cost to maintain a cocktail lounge, etc. He recommended that subsections (a) and (b) not be repealed, and indicated that "cost of doing business" should be defined as acquisition cost plus the actual cost of doing business.

John Hennen addressed staff's recommendation to delete subsections (a) and (b) of WAC 314-52-114. He said for staff to properly administer the rule with the inclusion of these two subsections would not be easy, nor would it be inexpensive. He suggested, rather, that it would depend on the Board's priorities as to how much resources could be put forth to enforce the rule.

Following lengthy discussion, Board Member Hannah suggested that the language be changed to define the cost of doing business as acquisition cost plus ten percent. John Hennen indicated that an amendment of this magnitude is "beyond the scope" of the notice of the public hearing as advertised, and said a new notice would have to be filed for another public hearing.

Board Member Hannah moved to continue the hearing to another date, to be scheduled as soon as possible, with the intent of amending the rule to define the cost of doing business as acquisition cost plus ten percent. Board Member Watanabe seconded the motion and it carried unanimously. The public hearing ended at 10:30 a.m.

Resp to Costco RFP
104

RESPTOCOSTCORFP0104

TX076_003